IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.6097 OF 2003

Attungal Sidhi : Petitioner
(Orig. Plaintiff)

V/s.

Tushar J. Chauhan : Respondent
(Orig. Defendant)

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Mr.G.S. Bhal for the petitioner.

Mr.M.V.Sali with Mr.Arun Palekar for the respondent.

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CORAM : S.A. BOBDE, J.

February 17, 2005.

P.C.:

1. Rule, returnable forthwith.

Mr.Sali, learned counsel for the respondent, appears and waives service of rule.

Heard by consent.

2. The petitioner is aggrieved by the decision of a Bench of Small Causes Court at Bombay denying him the declaration of tenancy in respect of a stall admeasuring 6′ x 4′.

3. The petitioner filed a suit for the aforesaid declaration. The trial Court decreed the suit. However, in an appeal filed by the original defendant, the Bench of the Small Causes Court at Bombay reversed the decree.

4. Having heard the learned counsel for the parties at length and having perused the judgement of the appellate Court, I find no error of law apparent on the face of the record to warrant interference with the order. The appellate Court has decided the matter on merits and has rightly observed vide para 14 that the petitioner has failed to prove by any documentary evidence that he was paying rent to the respondent in respect of the suit premises. The appellate Court has, therefore, rightly rejected the petitioner's claim that he was a monthly tenant of the deceased Lalji Chauhan to whom he was paying a monthly rent of Rs.70/-. The petitions has not been able to point out any evidence to that effect to this Court either. The finding of the appellate Court, therefore, cannot be said to be baseless or vitiated by perversity.

5. Moreover, the appellate Court has dismissed the petitioner's suit also because of an apparently contrary

plea taken by the petitioner in an earlier suit filed against the Bombay Municipal Corporation in which the plaintiff has claimed ownership of the very premises. Though there are statements in that suit to the effect that he was a tenant of Lalji Chauhan, it is pleaded in that suit also that no receipts were issued by Lalji Chauhan or by the son of Lalji Chauhan. Admittedly, there is no agreement of tenancy whatsoever on record. In the circumstances, there is no reason to interfere with the order of the appellate Court.

6. In the result, the Writ Petition is devoid of any merit and is, accordingly, dismissed. The rule is discharged.

Sd/-

S.A. BOBDE, J.